

**Criminal Jury Instruction Template**  
***Commonwealth v. Defendant*, docket no. xxx**  
**Jury Instructions**

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## INTRODUCTION

Jurors, thank you for serving on this jury. Jury service is a very important part of our democratic self-government. You are responsible to uphold the law and our principles of justice. That is what you promised to do at the start of this trial when you took your oath as a juror.

You must carefully consider all of the evidence, decide who and what to believe, and decide whether the prosecution has proved beyond a reasonable doubt that DFT is guilty of the crimes charged in this case.

[< *If not splitting the charge*> The final part of this trial will take place in two steps. The attorneys will make their closing arguments, where they will summarize the evidence and suggest conclusions you may reach. The defense attorney will argue first and the prosecutor will argue last. After their closing arguments, I will give you final instructions. You will then work together to reach a verdict.]

< *IF NOT SPLITTING THE CHARGE, PAUSE HERE FOR CLOSING ARGUMENTS*>

[< *If splitting the charge*> The final part of this trial will take place in three steps. I will give you instructions about the law for the specific charges in this case. Then, the attorneys will make their closing arguments, where they will highlight the evidence that they think is important and will argue in favor of the conclusions that they ask you to reach. The defense attorney will argue first and the prosecutor will argue last. After the closing arguments, I will give you general instructions that apply in every case. You will then work together to reach a verdict.]

< *continue here whether splitting the charge or not*>

Please pay close attention to my instructions. All of my instructions are important, and you must follow all of them even if you do not agree with them.

To make sure that I give you the instructions accurately, I will read them to you. You will also get a written copy so you can [read along if you wish and] refer to them in the jury room during your deliberations.

I will do my best to make sure that the instructions I give when speaking with you match the written instructions. If there is any difference between what I say aloud and what the written instructions say, please follow what I say aloud.

< *if recording provided* > I will also give you a recording of my oral instructions.<sup>1</sup> That way, when you deliberate you can listen again to any part of what I am about to tell you.

## THE PROSECUTION'S BURDEN OF PROOF

### Presumption of Innocence.

There is a fundamental rule that applies in all criminal cases, including this case. Every person who is accused of a crime is presumed to be innocent of that crime. DFT is presumed innocent of the charge[s] in this case.

That means you must consider DFT to be innocent unless the prosecution has proved **beyond a reasonable doubt**—through evidence presented during the trial— that DFT committed the crime[s] charged. I will explain what I mean by “reasonable doubt” in just a moment.

DFT does not have to do anything to convince you he is innocent. He does not have to explain anything. DFT does not have to testify, call or question witnesses, or provide any evidence at all—because you must presume he is innocent. Instead, it is up to the Commonwealth to prove the charge[s] against DFT beyond a reasonable doubt. This burden of proof never shifts to the defendant.

After you have considered all the evidence carefully and fairly, if you have a reasonable doubt about the DFT's guilt on a particular charge then your

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<sup>1</sup> *Commonwealth v. Baseler*, 419 Mass. 500, 505–506 (1995) (judge may provide jury with recording of entire oral charge without parties' consent).

verdict must be **not guilty** on that charge. You may find DFT **guilty** of a charge only if all twelve deliberating jurors agree that the Commonwealth has proved the charge beyond a reasonable doubt.

### **Proof Beyond a Reasonable Doubt<sup>2</sup>**

So, the burden is on the Commonwealth to prove **beyond a reasonable doubt** that DFT is guilty of the charge[s] made against him. What is proof beyond a reasonable doubt? The term is often used and probably pretty well understood, though it is not easily defined. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt, for everything in the lives of human beings is open to some possible or imaginary doubt.

A charge is proved beyond a reasonable doubt if, after you have compared and considered all of the evidence, you have in your minds an abiding conviction, to a moral certainty, that the charge is true. When we refer to moral certainty, we mean the highest degree of certainty possible in matters relating to human affairs—based solely on the evidence that has been put before you in this case.

I have told you that every person is presumed to be innocent until he or she is proved guilty, and that the burden of proof is on the prosecutor. If you evaluate all the evidence and you still have a reasonable doubt remaining, the defendant is entitled to the benefit of that doubt and must be acquitted.

It is not enough for the Commonwealth to establish a probability, even a strong probability, that the defendant is more likely to be guilty than not guilty. That is not enough. Instead, the evidence must convince you of the defendant's guilt to a reasonable and moral certainty; a certainty that convinces your understanding and satisfies your reason and judgment as jurors who are sworn to act conscientiously on the evidence.

That is what we mean by proof beyond a reasonable doubt.

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<sup>2</sup> This instruction is mandatory, must be delivered verbatim, and may not be revised. See *Commonwealth v. Russell*, 470 Mass. 464, 477–478 (2015).

## WHAT THE PROSECUTION MUST PROVE

*< if multiple indictments>* There are \_\_\_ different indictments or charges in this case. You must decide whether DFT is guilty of each charge separately.

For each charge there are certain things the Commonwealth must prove beyond a reasonable doubt to show DFT is guilty. I will explain these legal rules to you now.

Indictment 001: *< name>*.

*< add instruction>*

*<If Splitting the Charge: (i) Sidebar with counsel, ask if any objections to substantive instructions; (ii) Correct or clarify instructions as necessary or appropriate; (iii) Pause here for Closing Arguments, then tell jurors you must give them some additional instructions>*

## REACHING A VERDICT

For each charge you must decide whether the Commonwealth has proved, beyond a reasonable doubt, that the defendant is guilty of that specific charge. You may not find the defendant guilty on any charge just because you think the defendant did something else that was wrong or improper.<sup>3</sup>

Your decision as to each charge must be unanimous, meaning that all twelve deliberating jurors must agree. You will receive one verdict slip for each charge. When all twelve jurors agree on the verdict for a particular charge, the foreperson should check off that verdict and then sign and date the slip in ink.

For each charge, if you all agree that the Commonwealth has proved every element of that charge beyond a reasonable doubt, then you should find that DFT is **guilty** of that charge.

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<sup>3</sup> *Commonwealth v. Dunker*, 23 Mass. App. Ct. 64, 71-72 (1986).

On the other hand, if you all agree that that the Commonwealth did **not** prove one or more elements of a particular charge beyond a reasonable doubt, then your verdict must be **not guilty** on that charge.

#### ROLE OF THE JURY

Jurors, you have the most important role in this trial, because you must decide who and what to believe, and whether the Commonwealth has proved DFT's guilt beyond a reasonable doubt.

You must be completely fair and unbiased in your work as jurors. Do not let your emotions, any kind of prejudice, or your personal likes or dislikes influence you in any way. Consider the evidence calmly and carefully. Do not be influenced by the nature of the charge[s] or the possible consequences of your verdict. And do not let your personal feelings about any person, criminal charge, or anything else influence your decision.

#### EVALUATING THE EVIDENCE

You must decide this case based **only** on the evidence presented at the trial. You may not decide this case based on anything else. Do not consider anything you have read, heard, or seen outside of this courtroom. Those things are **not** evidence. And you may not base your verdict on suspicion, guesswork, or speculation.

#### Defendant Not Testifying

*< discuss in advance with counsel—omit if defendant does not request this instruction, or if defendant ends up testifying >*

As you know, DFT did not testify at this trial. You may not hold that against him. DFT has an absolute right not to testify because, as I've explained, he is presumed to be innocent and does not have to do anything to convince you he is innocent.

It does not matter why DFT did not testify. It is not relevant to what you must decide, which is whether the Commonwealth has proved—based on the evidence presented at trial—that DFT is guilty beyond a reasonable

doubt. The fact that DFT did not testify is not evidence, and you may not consider it or even discuss it in deciding this case.

### **Checklist of Other Instructions Commonly Needed**

*<Delete this checklist section, or replace it with one or more of the following, as appropriate. Some of these items are best addressed at the beginning of the “What the Prosecution Must Prove” section, above, before instructing on the elements of particular charges.>*

- Identification Evidence
- Participant / Aider-Abetter (*f/k/a joint venture*)
- First Complaint
- Gang Affiliation Evidence
- Graphic or Gruesome Evidence
- Humane Practice / Voluntariness of Statement in Custody
- Photo or Fingerprints of Defendant
- Police Familiarity with Defendant
- Police Investigation Omissions (*Bowden*)
- Prior Consistent Statements
- Prior Inconsistent Statements
- Specific Unanimity [*add to instruction on relevant indictment*]
- Diverse times or places / events alleged over a period of time
- Taking a View
- Witness with Plea Agreement or Immunity
- Prior Bad Acts

### **What is Evidence**

As I told you earlier, you must decide this case based only on the evidence presented at trial. The evidence consists of the testimony of witnesses, as you recall it, and the things that were marked as exhibits. You will have the exhibits with you in the jury room. *<explain any exception, such as*

*dangerous materials*> [< *if relevant*> Things that were marked only for identification are not exhibits, and you will not be able to consider them.]

< *If any Stipulation as to Facts*> In addition, as you heard during the trial, the prosecution and defendant agreed that certain things are true. You must accept those things as true.<sup>4 5</sup>

< *If any Redaction*> As you review the exhibits, you may find that some information has been removed because it is not relevant. Please ignore that and don't try to guess what may have been removed or why.

Other things are not evidence and you may **not** consider them when deciding this case.

- The fact that the defendant has been indicted or charged with certain crimes is not evidence.
- Questions that a lawyer asked of a witness are not evidence. Only the answers are evidence. For example, if a lawyer asked "wasn't it raining outside" and the witness answered "no"—or said "well, it was cloudy"—the question is not evidence that it was raining.
- If a lawyer asked a question, and I sustained an objection and therefore the witness did not answer it, then neither the question nor the fact that the witness did not answer is evidence.
- If I struck, or told you to disregard, any part or all of an answer by a witness, then that part of the testimony is not evidence and you may not consider it.
- Anything that you may have seen or heard when the court was not in session is not evidence.

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<sup>4</sup> See *Commonwealth v. Triplett*, 398 Mass. 561, 570 (1986) ("If controvertible facts are agreed to by stipulation, those facts no longer are at issue and must be accepted by the fact finder. A stipulation as to testimony, in contrast, leaves to the trier of fact its role of determining the facts based on the agreed evidence....").

<sup>5</sup> See also *Commonwealth v. Ortiz*, 466 Mass. 475, 484–484 (2013) (discussing how to handle stipulations to the existence of an element of a charge).



- The opening statements and the closing arguments of the lawyers are not evidence. And if your memory of the testimony differs from the attorneys', you should rely on your memory.
- Any notes that you have taken are not evidence. But you may use your notes to refresh your memory of the evidence.

## Direct and Indirect Evidence

As you know, evidence can come in many forms. It can be testimony about what someone saw, heard, smelled, or felt. It can be someone's opinion. And it can be an exhibit.

Some evidence proves a fact directly. For example, if a witness testifies that she saw and felt it raining outside before she came into the courthouse, then that is direct evidence that it was raining.

Some evidence proves a fact indirectly. For example, let's say a witness testifies that he saw someone come into the courthouse wearing a wet raincoat and shaking water off an umbrella. That is indirect evidence that, if you believe it, might lead you to conclude that it was raining outside even though the witness did not see, hear, or feel the rain.

This kind of indirect evidence does not directly prove that something is true, but it is evidence from which you could logically conclude that it is. We call this "drawing an inference." We all draw inferences every day; we take some information that we know, we apply our intelligence and common sense, and then we reach a conclusion. But inferences must be based on facts; they can't just be guesses that you make when you're not sure about something.<sup>6</sup>

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<sup>6</sup> See, e.g., *Commonwealth v. Dostie*, 425 Mass. 372, 376 (1995); see also *Commonwealth v. Marrero*, 427 Mass. 65, 73 (1998) (proof of inferences).

Sometimes you can draw more than one inference. You have to decide which inferences are reasonable, and decide which seems more reasonable to you.<sup>7</sup>

It makes no difference whether evidence is direct or indirect. The Commonwealth may be able to prove a criminal charge with direct evidence, indirect evidence, or a combination of both.

## **Credibility**

A very important part of your job as jurors is to decide who and what to believe. You may believe everything a witness says, part of it, or none of it.

Sometimes people do not tell the truth. You must decide whether a witness was being truthful, or was deliberately lying. If you conclude that a witness lied to you about something, then of course you should not believe that part of the testimony. And if you think that a witness deliberately gave false testimony about something that matters in this case, then you may—but are not required to—reject and not believe some or all of the rest of that witness’s testimony.<sup>8</sup>

Sometimes people make an honest mistake. You must also decide whether a witness testified accurately, or whether the witness may have gotten something wrong without meaning to do so. A witness may recall seeing or hearing something, but actually be mistaken.

For example, the witness might not have paid close attention or might have misunderstood what was happening. Or a witness’s memory of what happened could be incorrect.

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<sup>7</sup> See, e.g., *Commonwealth v. Miranda*, 458 Mass. 100, 113 (2010); *Commonwealth v. Anderson*, 448 Mass. 548, 563 (2007); *Commonwealth v. Kelley*, 359 Mass. 77, 94 (1971).

<sup>8</sup> See, e.g., *Commonwealth v. Manning*, 367 Mass. 605, 610 (1975); *Ducharme v. Holyoke St. Ry. Co.*, 203 Mass. 384, 397 (1909).

If you conclude that a witness tried to be truthful but that some part of the person's testimony was not accurate, then you should not consider the inaccurate testimony.

How do you decide whether you believe particular statements by a witness?

Ask yourself:

- Did the testimony seem reasonable or probable?
- Did the witness have a good chance to observe what happened?  
How much attention did the witness pay?
- Does the witness's memory seem accurate?
- Was the witness's testimony consistent with other evidence, or instead contradicted by other evidence?
- Did the witness make a prior statement or give prior testimony that differs in any significant way from their testimony at trial?
- Has the witness omitted any important information that they testified about at trial from a prior statement or testimony?
- Did the witness have any motive for testifying in a certain way or have any other bias that may have influenced the witness's testimony?

< ***if prior conviction*** > If you heard evidence that a witness was previously convicted of a crime, you may consider that evidence only in deciding whether you believe the witness. You may decide that a witness's prior conviction makes the witness's current testimony less believable. On the other hand, you may decide that the conviction does not change how much you believe the witness's testimony.

< ***if police or law enforcement witness*** > You should evaluate the testimony of a police officer, or someone else who works for a law enforcement agency, in the same way you would evaluate anyone's testimony. You must not automatically believe or disbelieve a witness just because the person is a police officer.

## Importance or Significance of Evidence

It is also up to you to decide how important each part of the evidence is, whether it is testimony by a witness or an exhibit. Whether evidence is direct or indirect, you should give every piece of evidence whatever significance you think it deserves.

You are not required to believe something simply because it appears in an exhibit. It is up to you to decide how important any exhibit is.

You do not have to treat testimony by the witnesses as more or less significant than the exhibits. You may find that a witness's testimony is very important, or that an exhibit is more important. That is up to you.

### Opinion Testimony<sup>9</sup> <omit if not relevant>

Most of the testimony came from witnesses who saw or heard something. Some witnesses also told you about opinions or conclusions they reached based on some special training or experience. But even if a witness has some special training or experience, that does not necessarily make the witness's testimony any more believable or important than other testimony or exhibits.

You must decide whether you believe the witness, and how much importance to give to the witness's testimony. You should consider all the factors I have previously mentioned, including whether the witness had a motive to testify in a certain way or some other bias that could have influenced the witness's testimony.

In addition, as you evaluate a witness's opinions or conclusions, you should also ask:

- Was the witness's testimony supported by the facts of this case?
- Did the witness use guesswork or assumptions that you do not find to be convincing or are not consistent with the facts?

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<sup>9</sup> Adapted from *Commonwealth v. Hinds*, 450 Mass. 1, 12 n.7 (2007).

- Did the witness have sufficient education or experience?

You may decide to accept all, some, or none of the opinions or conclusions offered by a witness. But please remember that witnesses, even those with special training or experience, do not decide cases; juries do. It is up to you to decide this case, and to decide whether you accept or reject any opinion or conclusion that a witness offered during the trial.

## **Juror Notes**

Many of you have taken notes during the trial. Your notes may help you remember the evidence, especially the testimony, but of course they are not an actual transcript or official record of what was said. So use your notes only to help you remember what you heard and saw during the trial. Whether you took notes or not, you must rely on your own memory of what the witnesses told you.

After the trial is over, and you have returned your verdict, a court officer will collect your notes and destroy them.

## **Objections During Trial**

During this trial, the lawyers may have objected to questions posed to a witness. They may have moved to “strike,” or in essence erase, certain testimony. Whenever a lawyer believes that something would violate the rules of evidence, the lawyer is supposed to object or move to strike. That is part of the lawyer’s job.

## **BE FAIR<sup>10</sup>**

Let’s turn to another important issue that I raised with you at the beginning of this trial.

Our system of justice depends on judges like me and jurors like you being able and willing to make careful and fair decisions. All people deserve fair and equal treatment in our system of justice, regardless of their race,

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<sup>10</sup> See Supreme Judicial Court Model Jury Instructions on Implicit Bias.

ethnicity, national origin, religion, age, ability, gender, sexual orientation, education, income level, or any other personal characteristic. You have agreed to be fair. I am sure that you want to be fair, but that is not always easy.

One difficulty comes from our own built-in expectations and assumptions. They exist even if we are not aware of them and even if we believe we do not have them. Some of you may have heard this called “implicit” bias and that is what I’m talking about. We judges have the same problem, so let me share a few strategies that we have found useful.

First, slow down; do not rush to a decision. Hasty decisions are more likely to reflect stereotypes or hidden biases. Take time to consider all the evidence.

Second, as you start to draw conclusions, consider what evidence, if any, supports the conclusions you are drawing and whether any evidence casts doubt on those conclusions. Double check whether you are actually using unsupported assumptions instead of the evidence.

Third, as you think about the people involved in this case, consider them as individuals, rather than as members of a particular group.

Fourth, I might ask myself: Would I view the evidence differently if the people were from different groups, such as different racial, ethnic, or gender identity groups?

Fifth, listen to your fellow jurors. They may have different points of view. If so, they may help you determine whether you are focusing on the facts or making assumptions, perhaps based on stereotypes. Of course, your fellow jurors could be influenced by their own unstated assumptions, so don’t be shy or hesitate to speak up. You should participate actively, particularly if you think the other jurors are overlooking or undervaluing evidence you find important. In fact, when you explain your thoughts out loud to other jurors, you are also helping yourself to focus on the evidence, instead of assumptions.

If you use these strategies, then you will do your part to reach a decision that is as fair as humanly possible. That is your responsibility as jurors.

## **JURY DISCUSSIONS**

I am now going to give you some instructions about how to conduct your deliberations.

### **Private Discussions**

First of all, you must keep your deliberations secret. You should not tell anyone outside the jury room, not even me, anything about them. For example, please do not tell me or anyone else the results of any votes you may have taken before you all agree on a verdict. You must not tell anyone how your discussions are going or what any jurors said.

If you need to communicate with me before you reach a verdict, you should send me a written note, in a form you all agree on. It must be signed by your foreperson. I will discuss your note with the lawyers. Then I will either send you a response in writing or bring you into the courtroom and respond to you in person. If you do send me a note, it should not mention any votes you may have taken or anything else about your deliberations.

Do not talk about the case unless all of you are present and no one else is in the room. If one of you needs to leave for a moment, the rest of you should stop deliberating until that juror returns. If we break for the day before you reach a verdict, you must not communicate with other jurors about the case until the next day and only after we gather in the courtroom and I ask you to resume your deliberations.

As you work to decide this case, and until I accept your verdict, you must not communicate with anyone about the case, except each other. And you must not do any kind of research about this case. You may not do so in any way, including with an electronic device such as a cell phone or tablet. This also applies to the alternate jurors.

## **Alternate Jurors**

The law permits only twelve jurors to participate in deciding a criminal case. There are fourteen of you here, so in a few minutes our clerk will randomly select two of you to be alternate jurors. The other twelve of you will work together to decide this case. We chose fourteen of you originally in case one or two of you gets sick or has some other unexpected emergency.

If you are chosen as an alternate, your continuing service is still very important and you must comply with all the rules I have given you. The alternate jurors will stay in another room and must not discuss the case with each other or with anyone else. If we lose a deliberating juror because of some personal emergency or sickness, then I will send one of the alternates into the jury room. If this happens, the deliberating jury will have to restart its discussions from the beginning.

## **Role of the Foreperson**

One of you will serve as foreperson of the jury. We will discuss who will be the foreperson in just a moment. The foreperson will make sure that each of you has the chance to speak and that the other jurors listen to you respectfully. But the foreperson's opinion about the case is no more important than the opinions of all other jurors. Once you agree on a verdict, the foreperson will fill out the verdict slip[s] and will report your verdict in court.

## **Making Decisions as a Group**

When you work together as a jury, you will be making a decision as a group. This kind of decision-making is very valuable. Why do I say that? When a jury hears and sees evidence, each juror acts as a safeguard for the others. For example, someone else may recall evidence that you missed. And each of you will have insights that will help the other jurors make sense of the evidence and reach a verdict.

No member of the jury is more or less qualified than any other juror to decide who and what to believe. You have all heard the same evidence,



listened to the same witnesses, and looked at the same exhibits. And you have all taken the same oath, promising that you will “well and truly try the issues between the Commonwealth and the defendant according to the evidence and the law.” So you are all equally qualified to reach a verdict.

I have a few suggestions that might help you as you work together.<sup>11</sup>

First, you should discuss and analyze the evidence before you take any vote about a verdict. Voting first could keep you from discussing the issues, and hearing other peoples’ perspectives, before making up your own mind.

Second, I encourage you to discuss not only the evidence you think supports your view of the case, but also what evidence you think might lead you to make a different decision.

Third, as the other jurors talk about the evidence that they found important, please listen. In order for this process to work fairly, each of you should hear every other juror’s insights and ideas. Please be open to them, since they might influence your thinking.

Fourth, don’t be shy. As in any group, some of you will be more comfortable than others in sharing your thoughts. But you must have the benefit of everyone’s input to help you reach a just verdict. For example, you may be the only one who remembers a particular piece of evidence or has a particular point of view. The more points of view that you all hear, the more effective your deliberations will be.

Fifth, don’t be afraid to change your mind if the discussion persuades you that you should. But you should not accept a decision just because other jurors think it is the right one. In the end, you should vote based on your

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<sup>11</sup> See Jury Committee of the American College of Trial Lawyers, “Improving Jury Deliberations Through Jury Instructions Based On Cognitive Science,” at 19 (Feb. 2019), available at [https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white-papers/improving-jury-deliberations-final.pdf?sfvrsn=9a786c69\\_6](https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white-papers/improving-jury-deliberations-final.pdf?sfvrsn=9a786c69_6).

own assessment of the evidence, regardless of how other jurors have voted. Ultimately, you each must decide this case for yourself.

*< If not splitting the charge, Sidebar with Counsel—ask if any objections to instructions>*

Jurors, before I conclude I need to pause and speak with the attorneys.

*<after sidebar, and after correcting or clarifying jury instructions as necessary or appropriate, continue as follows>*

#### SELECTING ALTERNATE JURORS AND THE FOREPERSON

*< Option 1: Judge Selects Foreperson, then Clerk chooses Alternates>*

I appoint the juror in seat number \_\_\_\_ to be the foreperson of the jury. Our clerk will now randomly select *<insert number>* of you, from among all of the jurors except for the foreperson, to serve as alternate jurors.

*<let clerk describe process, then choose & announce alternates>*

*< Option 2: Clerk Chooses Alternates, then Judge Selects Foreperson<sup>12</sup>>*

It is now time for our clerk to randomly select *<insert number>* of you to serve as alternate jurors.

*<let clerk describe process, then choose & announce alternates>*

Now that our clerk has selected the alternate jurors, I appoint the juror in seat number \_\_\_\_ to be the foreperson of the jury.<sup>13</sup>

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<sup>12</sup> “In the interest of fairness, judges will often draw the numbers of the alternate jurors *before* designating the foreperson, although the judge should secure the parties’ consent, because the statute contemplates selection of the foreperson before determining alternates.” P. Lauriat and D. Wilkins, Massachusetts Jury Trial Benchbook § 3.1 at 91 (4th ed. 2019); see also G.L. c. 234A, § 68 (to select alternate jurors, “the court shall direct the clerk to place the names of all of the available jurors except the foreperson into a box or drum and to select at random the names of the appropriate number of jurors necessary to reduce the jury”); cf. *Wilson v. Commissioner of Transitional Assistance*, 441 Mass. 846, 852–853 (2004) (in a statute or other rule of law, the word “shall” is construed as directory or permissive, rather than mandatory, “when necessary to comply with [the] dominant purpose” of the statute as a whole).

<sup>13</sup> Some judges prefer to let the deliberating jurors select their own foreperson, if all parties agree. See Massachusetts Jury Trial Benchbook, *supra*, § 3.1.3 at 92–93, § 5.8.1 at 379–380.

*<ask the clerk to swear in the court officers>*

## CONCLUSION

The deliberating jurors will now go and start their private discussions. Please have confidence in what you are about to do. By serving on this jury, you carry on a long and proud tradition of citizens serving in jury trials in Massachusetts. If you are honest, thoughtful, and fair, you will be able to reach a fair and just verdict.

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Under this approach, once the clerk has chosen the alternates the judge might instruct as follows:

Jurors, when you begin to meet in private, your first responsibility is to select one juror to serve as your foreperson. You may do so however you want. Once you have picked your foreperson, please send me a note—through the court officer—that tells us which one of you will be the foreperson. If for any reason you cannot quickly and easily select a foreperson, then send me a note asking me to do so instead.